

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
SAN ANGELO DIVISION

DR. JAMES JONES,

Plaintiff,

v.

ANGELO STATE UNIVERSITY,

Defendant.

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CIVIL ACTION NO. 6:09-CV-090-C

**PLAINTIFF'S RESPONSE TO DEFENDANT'S RULE 56 AND 12(C) MOTIONS
FOR SUMMARY JUDGMENT AND/OR JUDGMENT ON THE PLEADINGS**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

NOW COMES Dr. James Jones, Plaintiff in the above-styled and numbered cause ("Plaintiff"), and pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Rules 7.1 and 56.4, files this, his Response to Defendant's Rule 56 and 12(c) Motions for Summary Judgment and/or Judgment on the Pleadings, and in support thereof would respectfully show the Court the following:

1. Through this Response, Plaintiff seeks an Order denying any and all relief sought by Defendant in Defendant's Rule 56 and 12(c) Motions for Summary Judgment and/or Judgment on the Pleadings, which was filed by Defendant on January 29, 2011.

2. Pursuant to Local Rule 56.4(b), each of the required matters listed under Local Rule 56.4(a) are set forth in Plaintiff's Brief in Support of Plaintiff's Response to Defendant's Rule 56 and 12(c) Motions for Summary Judgment and/or Judgment on the Pleadings ("Plaintiff's Brief").

3. In support of this Response, Plaintiff hereby references and fully incorporates herein by this specific reference: (1) Plaintiff's Brief; (2) the summary judgment evidence filed as Plaintiff's Appendix in Support of Plaintiff's Response to Defendant's Rule 56 and 12(c) Motions for Summary

Judgment and/or Judgment on the Pleadings; and (3) the pleadings and documents of record in this matter.

4. Through this Response, Plaintiff's Brief, and Plaintiff's summary judgment evidence, Plaintiff contends the following:

A. Rule 12(c) Motion for Judgment on the Pleadings

- (1) Plaintiff may bring claims against Defendant under the Texas Constitution, and he is not limited to bringing state constitutional claims only against state officials in their official capacities.
- (2) Plaintiff has not sued for monetary relief under the Texas Constitution, and he only seeks equitable relief, which is permitted.

B. Motion for Summary Judgment

- (1) Plaintiff timely filed his Title VII claims within the 90-day statute of limitations because he filed his original suit in the Northern District of Texas, San Angelo Division, within the requisite time period, and that suit tolled the limitations period, thus, making the filing of the state court suit (which is this current suit that was removed and transferred by Defendant) timely.
- (2) All of Plaintiff's claims under Title VII and Chapter 21 of the Texas Labor Code (and the conduct giving rise to them) are covered by his EEOC/TWC Charge because the conduct is all interrelated and a continuous course of action by Defendant.
- (3) The notice requirement under the Texas Religious Freedom Restoration Act is not jurisdictional, and Plaintiff gave Defendant actual and timely notice of the claim.
- (4) There is evidence that Defendant breached its contracts and agreements with Plaintiff because Defendant failed to follow its own policies, procedures, guidelines, rules, and/or regulations, which are a part of Plaintiff's contracts and agreements. Also, Plaintiff has suffered damage, as he was not afforded the opportunity to continue his employment (non-reappointed) because Defendant used Plaintiff's religion as a motivating factor in the non-reappointment. Additionally, Defendant injured or damaged Plaintiff's future employability.
- (5) Plaintiff was replaced by someone who is not an evangelical Christian and who does not openly express or identify his religious beliefs and practices. Also, Plaintiff was treated less favorably than other faculty members, who did not openly express or identify their religious beliefs and practices.
- (6) While Defendant may try to mask its non-reappointment of Plaintiff as based on "non-discriminatory" reasons, there is evidence that Plaintiff's religious speech was a motivating factor in his non-reappointment.

- (7) Plaintiff has properly asserted a claim under the Federal Declaratory Judgment Act, as there is a present, continuing harm or future harm in that Defendant interprets and applies its policies to improperly prevent religious speech. Also, Plaintiff does not need to name a state official, and he seeks proper declarations.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests the Court to deny Defendant's Rule 56 and Rule 12(c) Motions for Summary Judgment and/or Judgment on the Pleadings, in all things. Plaintiff further requests the Court to grant him such other and further relief, both general and special, at law or in equity, to which he may show himself justly entitled.

Respectfully submitted,

<u>/s/ Michael Y. Kim</u>	
Frank Hill	09632000
Michael Y. Kim	24039960
Christie L. Hobbs	24059961

HILL GILSTRAP, P.C.
1400 West Abram Street
Arlington, Texas 76013
(817) 261-2222
(817) 861-4685 Facsimile
fhill@hillgilstrap.com
mkim@hillgilstrap.com
chobbs@hillgilstrap.com

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2011, I electronically filed the foregoing with the clerk for the U.S. District Court, Northern District of Texas, using the CM/ECF system which will send notification of such filing to case participants registered for electronic notice, including the following counsel of record:

Daniel C. Perkins
Assistant Attorney General
Texas Attorney General's Office
General Litigation Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548.

/s/ Michael Y. Kim
Michael Y. Kim